

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CASE NO. 03-46545 RJK

Larry D. McDonald
SSN XXX-XX-2962
Connie R. McDonald
SSN XXX-XX-1285

CHAPTER 13 CASE

Debtor.

NOTICE OF OBJECTION TO CONFIRMATION OF PLAN

TO: Debtor and other entities specified in Local Rule 3015-3.

1. EMC Mortgage Corporation (hereinafter "Secured Creditor") moves the Court for the relief requested below and gives notice of hearing.
2. The Court will hold a hearing on this objection at 10:30 a.m. on October 21, 2004, before the Honorable Robert J. Kressel in Courtroom 8 West at U.S. Courthouse, 300 South 4th Street, Minneapolis, Minnesota.
3. Any reply to this objection must be filed and delivered not later than 10:30 a.m. on October 20, 2004, which is 24 hours before the time set for the hearing, or filed and served by mail not later than October 18, 2004, which is three days before the time set for the hearing. **UNLESS A REPLY OPPOSING THE OBJECTION IS TIMELY FILED, THE COURT MAY SUSTAIN THE OBJECTION WITHOUT A HEARING.**
4. This Court has jurisdiction over this objection pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed September 16, 2003. The case is now pending before this Court.
5. This objection arises under 11 U.S.C. § 1322 and Local Rule 3007-1.

6. Debtor is indebted to Secured Creditor in the principal amount of \$124,950.00, as evidenced by that certain Promissory Note dated December 18, 2002, together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain Mortgage Deed dated December 18, 2002, executed by Larry D. McDonald and Connie R. McDonald, husband and wife, recorded February 18, 2003, as Document No. 7951136, a copy of which is attached hereto as Exhibit "A". The name and address of the original creditor is contained in the attached Exhibit "A".

8. Said plan is objected to on the basis that it is not feasible and that Debtor will not be able to make all payments under the plan and to comply with the plan as contemplated by 11 U.S.C. § 1325 (a)(6).

9. Said plan is also objected to on the basis that Debtor is delinquent in their pre-petition monthly mortgage payments to Secured Creditor for the months of April, 2003 through September, 2003, in the total amount of \$10,404.95, including late charges and that said delinquency existing in Debtor's mortgage loan cannot be cured within a reasonable time as required by 11 U.S.C. § 1322(b)(5). In In re Newton, 161 B.R. 207 (Bkrtcy.D.Minn. 1993), this Court reaffirmed its previous finding that more than 12 months is ordinarily not a reasonable time to cure a default in pre-petition homestead mortgage payments under 11 U.S.C. § 1322(b)(5). The plan, as proposed by Debtor, would require approximately 44 months to complete based on the Proof of Claim filed by Secured Creditor. Therefore, the plan does not comply with the provision of Chapter 13 of the Bankruptcy Code, as contemplated by 11 U.S.C. § 1325(a)(1).

10. The value of the property as scheduled by Debtor is \$151,000.00 subject to Secured Creditor's mortgage in excess of \$135,263.89.

11. The plan, as proposed, is not made in good faith by Debtor.

. . .

. . .

12. Therefore, it is requested that the Court deny confirmation of Debtor's plan.

Dated this 12th day of October, 2004.

WILFORD & GESKE

By /e/ James A. Geske

James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Suite 300
Woodbury, Minnesota 55125
651-209-3300
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO
COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT
PURPOSE.

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7951136

OFFICE OF COUNTY RECORDS
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2003 FEB 18 AM 9:15

AS DOCUMENT # 7951136
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MORTGAGE

010553305

Return To:

WELLS FARGO HOME MORTGAGE, INC.
FINAL DOCUMENTS 24701-224
3801 MINNESOTA DRIVE
BLUMINGTON, MN 55436-6234Henn Co. HQT
LAP # 154230
2/10/2003
Paid \$299.88

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 18.

(A) "Security Instrument" means this document, which is dated DECEMBER 18, 2002 (together with all Riders to this document).

(B) "Borrower" is
LARRY D. McDONALD AND CONNIE R. McDONALD, HUSBAND AND WIFE.

Borrower is the mortgagor under this Security Instrument.
(C) "Lender" is WELLS FARGO HOME MORTGAGE, INC.

Lender is a Corporation
organized and existing under the laws of THE STATE OF CALIFORNIA

MINNESOTA - Single Family - Revised Master/Freehold New UNIFORM INSTRUMENT

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Initials:

EMC
CRM

FD-900 (Rev. 1/01)

EMM Rev. 05/12/01

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IMAGEDEXHIBIT A

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Lender's address is

P. O. BOX 8137, Des Moines, IA 50304-8137

Lender is the mortgagee under this Security Instrument.

(B) "Note" means the promissory note signed by Borrower and dated DECEMBER 18, 2002.

The Note states that Borrower owes Lender ONE HUNDRED TWENTY-FOUR THOUSAND NINE HUNDRED FIFTY AND NO/100 Dollars

(U.S. \$ 124,950.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JANUARY 1, 2025.

(E) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower (check box as applicable):

<input checked="" type="checkbox"/> Adjustable Rate Rider	<input type="checkbox"/> Condominium Rider	<input type="checkbox"/> Second Home Rider
<input type="checkbox"/> Balloon Rider	<input type="checkbox"/> Planned Unit Development Rider	<input type="checkbox"/> 1-4 Family Rider
<input type="checkbox"/> VA Rider	<input type="checkbox"/> Biweekly Payment Rider	<input checked="" type="checkbox"/> Other(s) (specify)

Prepayment Rider

(H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (not have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(I) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(J) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(K) "Escrow Items" means those items that are described in Section 3.

(L) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 3) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(M) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(N) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that

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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witness:

Larry D. McDonald (Seal)
LARRY D. McDONALD Borrower

Connie R. McDonald (Seal)
CONNIE R. McDONALD Borrower

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STATE OF MINNESOTA, HENNEPIN

County as:

On this 15TH day of DECEMBER, 2002, before me appeared
 LARRY D. McDONALD AND CONNIE R. McDONALD, HUSBAND AND WIFE.

to me personally known to be the person(s) described in and who executed the foregoing
 and acknowledged that he/she/they executed the same as his/her/their free act and deed.



Donna M. Wold
 Notary Public

My Commission Expires: 1-31-07

This instrument was drafted by:

DIJANNA S. JOHNSON
 WELLS FARGO HOME MORTGAGE, INC.
 4041 EBSEN LANE #400
 BATON ROUGE, LA 70802

Tax statements for the real property described in this instrument should be sent to:

Wells Fargo Real Estate Tax Services, LLC
 1 HOME CAMPUS #2300-011
 DES MOINES, IA 50324-0001

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EXHIBIT A

**Lot 1, Block 3, Nokomis Gardens Rearrangement of Blocks 1,2,3,4 and 5,
Girard Parkview,
Hennepin County, Minnesota.**

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

Larry D. McDonald
SSN XXX-XX-2962
Connie R. McDonald
SSN XXX-XX-1285

CASE NO. 03-46545 RJK

Debtor.

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

Diana Waletzko, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Suite 300, Woodbury, Minnesota, declares that on October 12, 2004, I served the annexed Notice of Objection to Confirmation of Plan and proposed Order Denying Confirmation of Plan to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

Larry D. McDonald
Connie R. McDonald
6400 15th Ave S
Richfield, MN 55423

Jasmine Z. Keller
12 South 6th Street, Suite 310
Minneapolis, MN 55402

Gregory J. Wald
3601 Minnesota Drive Ste 800
Edina, MN 55435

U.S. Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated this 12th day of October, 2004.

/e/ Diana Waletzko

Diana Waletzko

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

**ORDER DENYING CONFIRMATION
OF PLAN**

Larry D. McDonald
SSN XXX-XX-2962
Connie R. McDonald
SSN XXX-XX-1285

Debtor.

CASE NO. 03-46545 RJK

This Chapter 13 Case came on before the Court on October 21, 2004, for hearing on Debtor's plan of debt adjustment. Appearances were as noted in the record. Upon the record made at hearing, and all other files and records in this case,

IT IS HEREBY ORDERED that confirmation of Debtor's plan of debt adjustment, as filed September 14, 2004, is denied.

Dated: _____
Judge of Bankruptcy Court